

**United States District Court  
Western District of Texas  
Waco Division**

SAYERS CONSTRUCTION, LLC,	§	
	§	
<i>Plaintiff</i>	§	
	§	
v.	§	Case No. 6:19-cv-325
	§	
TIMBERLINE CONSTRUCTION,	§	
INC. AND HIGH VOLTAGE, INC.,	§	<b>Jury Trial Demanded</b>
	§	
<i>Defendants</i>	§	

**Plaintiff's Original Complaint and  
Application to Vacate Interim Arbitration Awards**

Plaintiff Sayers Construction, LLC (“Sayers”) files this Application to vacate the February 25, 2019 Reasoned Interim Arbitration Award and the May 15, 2019 Second Interim Arbitration Award (collectively, the “Interim Awards”), issued by Arbitrator John S. Vento in *Timberline Construction, Inc. and High Voltage, Inc. v. Sayers Construction, LLC*, American Arbitration Association Case No. 01-17-0001-9546 (the “Arbitration”).<sup>1</sup> Sayers shows the following in support:

**PARTIES**

1. Sayers Construction, LLC is a Texas limited liability company with a principal place of business at 104 East Martin Luther King Drive, San Marcos, TX 78666.

2. On information and belief, Timberline Construction, Inc. (“Timberline”) is a corporation organized and existing under the laws of the State of South Dakota, having a principal place of business at 2326 Dyess Avenue, Rapid City, SD 57701. Since Timberline does not have a designated agent for service of process in this state despite engaging in business in this state, does not have a regular place of business in this state, and the lawsuit arises from Timberline’s business in this state, it may be served through the Texas Secretary of State, Service of Process, Secretary of

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<sup>1</sup> Sayers notes the Interim Awards are not final, but files this Application in an abundance of caution. Copies of the Interim Awards are attached hereto as Exhibits A and B.

State, James E. Rudder Building, 1019 Brazos, Room 105, Austin, Texas 78701, who will then forward service of process to Timberline's home office located at 2326 Dyess Avenue, Rapid City, SD 57701-9802. TEX. CIV. PRAC. & REM. CODE § 17.044.

3. On information and belief, High Voltage, Inc. ("HVI") is a corporation organized and existing under the laws of the State of Utah, having a principal place of business at 871 East Main St., Vernal, UT 84078. HVI is registered to do business in Texas and may be served through its registered agent, Northwest Registered Agent, 700 Lavaca St., Suite 1401, Austin, Texas 78701.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, as the action is between subjects of foreign states and the amount in controversy exceeds \$75,000.

5. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims asserted by Timberline and HVI in the underlying arbitration occurred in this District.

6. Defendants are subject to the Court's specific personal jurisdiction due at least to their following business in this forum: (i) Timberline contracted with Sayers and is a party to the Master Services Agreement ("MSA")<sup>2</sup> to be performed in part in Texas; (ii) HVI engaged in a joint venture with Timberline to perform services in connection with the MSA; (iii) in accordance with that joint venture, HVI sent invoices to Texas that were paid from Sayers' Texas bank account; and (iii) Timberline and HVI derived substantial revenue in connection with the MSA from Sayers from Texas and this District.

### **COUNT I**

#### **MOTION TO VACATE THE INTERIM ARBITRATION AWARDS**

7. Sayers incorporates by reference and realleges the preceding paragraphs.

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<sup>2</sup> March 2, 2016 Master Agreement for Contract Services executed by Plaintiff Sayers Construction and Defendant Timberline is attached hereto as Exhibit C.

8. Sayers moves the Court to vacate the Interim Awards issued in the Arbitration, and in support thereof is filing a Motion to Vacate contemporaneously herewith, which is incorporated by reference as if fully set forth herein.

9. Sayers moves the Court to vacate the Interim Awards in accordance with Texas Civil Practice & Remedies Code § 171.088(a)(2)(A), (a)(2)(C), (a)(3)(A), and (a)(3)(D), as well as 9 U.S.C. § 10(a)(2), (a)(3), and (a)(4).

### **DEMAND FOR JURY TRIAL**

10. Pursuant to Rule 38, Sayers demands a trial by jury of any issues so triable by right.

### **PRAYER FOR RELIEF**

Sayers respectfully requests that the Court vacate the Interim Awards and any other relief to which it may be justly entitled.

May 28, 2019

Respectfully submitted,

**GRIFFITH BARBEE PLLC**

*/s/ Casey Griffith*

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